

THE NEW ENVIRONMENTAL ASSESSMENT PROCESS A SIXTEEN-MONTH STATUS REPORT

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ABSTRACT

Bill 38 – the new *Environmental Assessment Act* – came into effect on December 30, 2002. The previous Act had set out a single obligatory review procedure for major projects. The primary purpose of the new statute is to provide much greater flexibility to customize review procedures on a project-by-project basis. The increased flexibility is intended to contribute to the government's strategic priorities for an improved investment climate while preserving high environmental standards. Other objectives of legislative reform include clearer process management accountabilities, increased procedural choice, more certainty and credibility for proponents, reduced agency workloads and government program delivery costs, and improved federal/provincial review harmonization. Most reviews now follow a basic two-stage approach:

- *pre-application stage* – focussed on initial consultations to scope the issues and set terms of reference for the proponent's EA application; and
- *application review stage* – review of the proponent's EA application (the assessment findings), leading to a Ministerial decision on EA certification.

During the first 16 months of operation (to late April 2004, when this paper was written), the new process has proven to be more efficient and flexible. There are encouraging signs of shorter overall review durations, although it is too soon to determine effects of the changes with confidence. Experience to date suggests increased proponent confidence in the process, given the number of "opt-ins". At the same time, public consultation efforts have not diminished under the new process, and through negotiations, a high level of First Nations participation has also been maintained. Joint federal/provincial EA reviews face some harmonization challenges which are now being addressed under the new cooperation agreement. Target cost efficiencies are being met, and the EAO is gearing up for a sustained high volume of project reviews for the next two years.

1. INTRODUCTION

On May 30, 2002, Bill 38 – the new *Environmental Assessment Act* – received Royal Assent. The new Act came into effect on December 30, 2002, once the regulations and operating procedures necessary to operate the new environmental assessment (EA) process were ready. The new statute replaces the former *Environmental Assessment Act*, which had been in effect for more than seven years (since June 30, 1995). A copy of the new Act and associated regulations may be downloaded from the Environmental Assessment Office (EAO) website at <eao.gov.bc.ca>. Further information may also be obtained by contacting the EAO either by telephone (250-356-7441) or e-mail (<eaoinfo@gems5.gov.bc.ca>).

2. INTENT OF LEGISLATIVE REFORM

As noted in a previous paper, delivered at the 2002 Reclamation Symposium, the new legislative initiative was implemented to address significant problems with the previous EA process. Readers are referred to that paper for more background. In summary, the intent of the new legislation was to provide for:

- more flexible procedures;
- clearer process management accountabilities;
- increased procedural choice for proponents;
- improved certainty and credibility with proponents;
- reduced agency workloads;
- greater cost-effectiveness for government; and
- improved federal/provincial review harmonization.

Whereas the former Act had prescribed a single mandatory review procedure which had to be followed for environmental assessments of all major projects which were subject to the Act, the primary purpose of the new Act is to provide much greater flexibility to customize review procedures on a project-by-project basis. The increased flexibility is intended to contribute to the government's strategic priorities for an improved investment climate while preserving high environmental standards.

3. WHAT IS RETAINED FROM THE FORMER EA PROCESS?

Strong features of the former legislation are retained. Like the former Act, the new Act provides for:

- an open, accountable, integrated and neutrally administered process which assesses the same broad range of effects (environmental, economic, social, heritage and health effects), albeit with increased flexibility to focus reviews on strategic-level issues raised by a project;
- meaningful participation by the public, proponents, First Nations, local governments, provincial agencies, federal agencies and, where warranted, British Columbia's neighbouring jurisdictions, based on procedures set by policy or in regulation; and
- co-operative review arrangements with federal EA authorities, and with increased flexibility to tailor the process to accommodate federal requirements.

Other features of the existing process which are retained include the following:

- A neutral agency (the EAO) continues to manage environmental assessments. Currently, the EAO comprises 29 staff positions, headed by a Deputy Minister who reports to the Minister of Sustainable Resource Management.
- A certificate (renamed an "environmental assessment certificate") must be granted before proponents may obtain approvals to construct and operate reviewable projects.
- Reviewability of projects continues to be established primarily by regulation, with the option to designate other projects to be reviewable where this is in the public interest. The intent is that the

- The process continues to meet high standards of openness and transparency, with former levels of public involvement maintained.
- Public and First Nations consultation programs are tailored to each project. The *Public Consultation Policy Regulation* ensures that, for the public, minimum standards of notification, access to information and consultation are maintained.
- Access to information is now provided through the “project information centre” (formerly called the “project registry”). A key change is that the system has switched over to predominantly electronic information circulation.
- Balanced Ministerial decision making is retained. Three (instead of two) Ministers now make decisions on project approval or rejection – the Ministers of Sustainable Resource Management and Water, Land and Air Protection, plus the minister responsible for the sector (the “Responsible Minister”).
- Similar, but broader, concurrent permitting provisions are now available to proponents.
- The new Act retains earlier powers to impose fees and recover process costs from proponents. These powers have not been used in the past.
- The new Act retains the former Act’s provisions to impose sanctions, remedies and penalties for non-compliance with the Act.

4. WHAT HAS CHANGED?

The following changes have been made to the EA process:

- The EAO now has primary responsibility and accountability for designing the review process for each project on a case-by-case basis.
- There is no mandatory project committee system. The EAO often chooses to work with project review teams or technical advisory committees, focused on specific issues or groups of issues raised by a project. The memberships of such committees are tailored to specific review needs.
- Where the EAO is satisfied that a project does not raise any strategic impact concerns that cannot be readily mitigated, it has the option to waive all environmental assessment and certification requirements.
- Where a staff-level assessment managed by the EAO may not be the most efficient or effective approach to project review, the EAO may ask the Minister of Sustainable Resource Management to consider establishing a more arm’s length review procedure, such as a public hearing or commission of inquiry.
- Under the new Act, the assessment of impacts and proposed mitigation measures is to be guided by government policy of more general application in cases where relevant policies and/or standards exist (e.g. provincial policies for managing acid rock drainage potential).
- Legislated timelines are retained, but the former system of timelines imposed on government has been simplified. In addition, proponents are now also subject to timelines with respect to the filing of information and the completion of other required tasks (e.g. consultation requirements).

- The EAO has the option to seek Ministerial direction when policy uncertainties are delaying project reviews, and where only political direction can provide the policy clarification and certainty necessary to guide the remainder of the assessment.
- Ministers may make an early decision to terminate a review and reject a project where it is clear that a project is not able to satisfy key government requirements.
- Proponents are now able to “opt in” to the process in cases where their projects are not automatically reviewable, but they see advantages in a formal EA review.
- Proponents are given the flexibility to develop their own terms of reference for the EA application, subject to government sign-off.
- With the elimination of the project committee system, the procedures for First Nations involvement have changed. The new Act provides broad flexibility to work with individual First Nations to develop consultation mechanisms to identify and address their issues and concerns. The province must continue to meet its constitutional obligations with respect to First Nations rights and title issues, and in this regard, the EAO is currently guided by the *Provincial Consultation Policy (2002)*.

5. CONCEPTUAL OVERVIEW OF TYPICAL EAO-LED PROCESS

Almost all projects are subject to a staff-level review managed by the EAO. In a rare case where the EAO asked the Minister of Sustainable Resource Management to establish a review process, procedures could vary considerably from one project to another, based on the special circumstances surrounding that project.

Where the EAO decides to conduct the review itself, a typical review consists of two review stages. Conceptually, the basic review staging is as follows:

- *Pre-application stage* – This stage focuses on issue identification, based on consultations with interested and potentially affected parties – federal, provincial and local government agencies, First Nations and the public. Pre-application concludes with the EAO signing off the final terms of reference (or information requirements) for the proponent’s EA application, following a review by interested parties. Terms of reference are usually drafted initially by the proponent for review and comment.
- *Application review stage* – This stage is devoted to a review of the formal EA application, and concludes with a certification decision by Ministers.

The main steps at the pre-application stage are as follows:

1. *Establish project reviewability* – Confirm that the project is reviewable under the Act – either under the *Reviewable Projects Regulation* (section 5), or as a result of Ministerial designation (section 6), or because the proponent has “opted in” to the EA process (section 7).
2. *Select review path* – Under section 10, the EAO chooses between three “review paths”, and issues an order identifying the chosen review path:
 - *EAO-managed review* [section 10(1)(c)] - typical – Potential impact concerns are identified, and the EAO decides to lead and manage the review – the most common situation

- *Ministerial referral* [section 10(1)(a)] – not typical – Potential impact concerns are identified, but the EAO does not believe that a staff-level review is the best approach. The Minister sets review procedures, and has more procedural choice (e.g. he or she may opt for an arm's length public hearing or commission of inquiry).
 - *Waiver* [section 10(1)(b)] – not typical – No potential impact concerns are identified in an initial scan, and the EAO decides to waive the project out of the EA process without an assessment or the need to obtain an EA certificate.
3. *Determine review procedure* [section 11(2)] – Under the typical review process, the EAO issues a section 11 order, outlining the review procedure to be followed for both review stages, as follows:
 - *Project scope* – identifies the physical facilities and activities – both on-site and off-site - which comprise the project for EA review purposes.
 - *Potential effects* – lays out a pre-application issue scoping procedure to identify the issues to be addressed in the proponent's application.
 - *Information requirements* – lays out the procedure to be used to set the proponent's EA application terms of reference.
 - *Consultation requirements* – stipulates the parties (the public, stakeholder groups, First Nations and agencies at all levels of government) to be consulted by the proponent and the EAO, and the notification, access to information and consultation mechanisms and responsibilities.
 - *Opportunities to comment* – provides for comment periods for the public, First Nations and government agencies.
 - *Time limits* – set time limits in addition to any already legislated under the Act.
 4. *Review/sign off application terms of reference* – The final formal government step at the pre-application stage is for the EAO to sign off the information requirements for the proponent's EA application. Typically, this step entails review by federal, provincial and local government agencies and First Nations, and there may also be an opportunity for the public to comment.
 5. *Prepare EA application* – The proponent conducts any required studies, and prepares its EA application in accordance with the approved terms of reference.

The main steps at the application review stage are as follows:

1. *Screen application* [section 16(2) and (3)] – The EAO, in consultation with other review parties, screens the application, within 30 days, to ensure that it contains the information required under the approved terms of reference. If all information is present, the process moves to the next step. If information is missing, the EAO returns the application to the proponent for upgrading.
2. *Application review* [section 16(5)] – The EAO coordinates the review of the application within 180 days, following the procedures set out in its section 11 order (see above). Application review includes provisions for a public comment period, First Nations consultation, and federal, provincial and local government review, and concludes with submission of an assessment report to Ministers.
3. *Ministerial decision making* [section 17(3)] – After receipt of the EAO's assessment report and recommendations (if any), Ministers have up to 45 days to decide whether to grant an EA certificate, to refuse to do so, or to order further assessment (which could take any form they determine).

4. *Concurrent permitting* [section 23] – Where proponents seek concurrent processing of permits, decisions on these applications must be made within 60 days following issuance of an EA certificate.

6. REGULATIONS AND GUIDELINES

Six regulations support the new Act, as follows:

- the *Reviewable Projects Regulation* establishes that specified classes of projects above a specified size threshold are automatically subject to the Act;
- the *Prescribed Time Limits Regulation* sets legislated time limits for government process steps at the application review stage, and also, for the first time, imposes time limits on proponent actions (including the filing of additional information, consultation requirements, etc.);
- the *Responsible Minister Order* identifies the “Responsible Minister” for each project sector, usually either the lead Minister for the sector within which a reviewable project falls (e.g. the Minister of Energy and Mines for a mining project), or another Minister whose Ministry has a stake in the outcome of a review (e.g. for water management or waste disposal projects with local community implications, the Minister of Community, Aboriginal and Women’s Services);
- the *Transition Regulation* lists those projects which, although of reviewable type and size, are grand-parented from the application of the Act because they received specified approvals before the new Act took effect (e.g. a mine project proposal is grand-parented, even if it has not yet proceeded if, on December 30, 2002, it held (and still holds) a valid and subsisting *Mines Act* section 10 permit);
- the *Concurrent Approval Regulation* sets out the procedure for “concurrent permitting”, allowing proponents to seek concurrent processing of applications for almost every type of statutory authorization needed to construct and operate a project – the sole exception is the Certificate of Public Convenience and Necessity, issued under the *Utilities Commission Act*; and
- the *Public Consultation Policy Regulation* sets minimum policy expectations for public notification, public access to information and public consultation during both the pre-application and application review stages of the process.

In addition, a detailed new guide to the EA process has been published - *Guide to the British Columbia Environmental Assessment Process* (EAO, March 2003) - which is available on the EAO’s website. The Guide provides information to all interested parties with respect to the Act, the regulations and the procedures for conducting environmental assessments in British Columbia. Topics covered in the guide include the regulatory context for EA of major projects in British Columbia, an overview of the Act and its accompanying regulations, the process for a typical EAO-led review, the special circumstances where the typical assessment process may not be followed, the legal and policy context for First Nations consultation, the process for harmonizing EA procedures with those of the federal government and other jurisdictions, and the provision of access to information through the Project Information Centre. In addition, supplementary guides provide further information specifically targeted to three of the key groups involved in EA reviews - project proponents, First Nations and the public. These supplementary guides are designed to assist each group in understanding its roles, responsibilities and opportunities to participate in EA reviews.

7. SIXTEEN-MONTH CHECK-UP

7.1 How Does the New Act Meet Government's Vision for the EA Process?

The new Act was designed to meet the vision endorsed by the Government of British Columbia during the Core Services Review in late 2002. Initial experience, based on sixteen months of operation, is as follows:

- *More flexible procedures* – The former Act mandated one process which had to be followed in all cases. Under the new Act, review procedures are designed on a project-by-project basis, and there is clearly more flexibility. While most projects follow an EAO-led two-stage review model, there are other options – the Minister may set procedures or the project may be waived out of the process. Within the general framework of the two-stage review model, which has been adopted for all but three projects to date, the EAO determines the review scope and procedures on a project-specific basis, and sets out the details in orders issued under section 11 of the new Act. The new flexibility is particularly evident in designing programs to ensure an appropriate level of consultation with other parties to the review – government agencies, First Nations and the public. For most reviews, technical advisory groups are established, with memberships that vary from project to project. In some cases, public input on the EA application terms of reference is obtained through public forums, in other cases, through public comment periods.
- *Clearer process management accountabilities* – The EAO formerly managed the EA process, but shared decision-making responsibilities with project committees, comprised of all levels of government and First Nations. The new Act makes no provision for project committees, and vests responsibility for designing and managing all aspects of each review in the EAO. This change has provided the EAO with a level of authority appropriate to its accountability for the effectiveness and efficiency of the process. Simplified process management responsibilities are considered essential in ensuring greater procedural flexibility. This flexibility includes the ability for EAO to work with issue-specific technical advisory groups on a project-specific basis – thus, the benefits of a committee-type process are still available, where needed. Focused advisory groups are in place for most current reviews.
- *Increased procedural choice for proponents* – Under the former Act, there was little procedural choice for either proponents or government. Three elements of greater choice were incorporated into the new process: (1) concurrent permitting options are broader, covering almost all permits which a proponent may require, (2) proponents of non-reviewable projects are able to “opt in” to the process where they see benefits in doing so, and (3) proponents may develop their own study terms of reference, rather than, as under the former process, responding to government-set terms of reference (“project report specifications”). Experience to date is as follows:
 - *Broadened concurrent permitting* – While only a few projects have completed review under the new EA process, several proponents have expressed interest in the new broader concurrent permitting provisions. Most power project proponents are considering concurrent permitting of *Water Act* and *Land Act* tenure applications, and in 2003, a proponent for an aggregate quarry opted for concurrent processing of permit applications. As a result, the quarry was granted a *Mines Act* permit within days of the EA certificate being issued. Early experience

with concurrent permitting suggests that this could become a highly valued feature of the new Act – proponents in several sectors are now indicating an intention to take advantage of these provisions. Concurrent permitting is easier to arrange for more straightforward projects, such as aggregate mines tend to be. It may be a less attractive option for proponents of complex major mines (e.g. where the mine plan is rapidly evolving).

- *Proponents “opting in”* – The reasons why a proponent might choose this new procedural option vary. They may see advantages in the “one window” contact point with government, or the legislated timelines, or federal/provincial review cooperation, or more generally, in being able to demonstrate the environmental sustainability of their projects more clearly for the global market place. So far, six proponents have selected the “opt-in” option for their projects, one of which subsequently proved to be automatically reviewable under the *Reviewable Projects Regulation*. These “opt-ins” are viewed as a clear signal that proponents have greater confidence in the new process.
- *Drafting EA application terms of reference* – Given that the new EA process relies on only one formal review stage once an EA application is filed, it is important that the application be as complete as possible. Thus, one of the key changes in the new legislation is a new requirement to formally establish the information requirements (typically referred to as “terms of reference”) for the EA applications which proponents file. Approval of terms of reference brings closure to the issue scoping exercise conducted at the pre-application stage by setting clear custom-tailored information requirements for the EA application. Where there have been adequate pre-application consultations with all interested parties, the risk of new issues emerging once the EA application is filed is much reduced. At the outset, it had been envisaged that proponents would routinely develop the first draft of their application terms of reference for review and comment by other parties to the review. Most proponents have availed themselves of this opportunity, although three proponents have left it to the EAO to draft them. The EAO is continuing to encourage proponents to undertake this task, and is currently developing guidelines intended to foster a more standardized approach since, in the absence of guidelines, proponents have experimented with a variety of formats. One observation is that, while public comment periods have been held on draft terms of reference, these comment opportunities have not always elicited input which is useful in fine-tuning the terms of reference. The public input received at pre-application public meetings and open houses is sometimes more focussed and helpful.
- *Improved certainty and more credibility for proponents* – Whether or not the new process is ultimately seen as an improvement by proponents is for proponents to decide. Under the former Act, review scope and overall review duration were sources of considerable uncertainty for proponents, even though government had developed a good track record in meeting legislated timelines imposed on its own actions. The intent under the new Act is for review scope to be more focussed on strategic issues which are relevant to whether or not projects should proceed. In addition, reviews managed by the EAO now place a greater emphasis on pre-application work. This means more pre-application effort by all parties, especially proponents, to ensure that EA applications are complete when they are filed and legislated timelines imposed on government take effect. Greater effort upfront should be offset by the opportunity cost savings associated with reduced overall review durations.

- *Reduced agency workloads* – As under the previous Act, the EAO continues to rely primarily on the policy and technical advice of government agencies to determine whether or not a project can proceed in a sustainable manner. The former process placed considerable technical and procedural demands on review agencies (primarily in connection with participation in project committee proceedings), at a time when agency staffing levels and budgets were being downsized. Procedural demands on review agencies are much reduced under the streamlined process, with their involvement focused on their technical issues, and at a strategic (rather than detailed design) level. Even so, reduced agency review resources continue to represent a challenge for many review agencies. It is anticipated that per-project technical workloads of agencies should be reduced further in the future in cases where it is possible to rely on performance-based standards to clarify - at the outset of a review - the government's impact management expectations. While development of outcome-based standards by line agencies has not proceeded as quickly as expected, the provincial government remains committed to adopting a more performance-based framework for project development.
- *Greater cost-effectiveness for government* – Former cross-government process costs needed to be reduced in line with agency budget reductions. The aim was that, with the procedural streamlining made possible under the new Act, the EAO (and also line review agencies – see above) would be able to manage EA reviews within the reduced budget targets without reducing the number of projects assessed. Our experience to date indicates that the process efficiencies introduced with the new Act are allowing the EAO and other agencies to cope with an increased project review workload with available resources. When considered from the standpoint of dollars expended per project reviewed per year, the EAO has more than met its current Service Plan performance target of a 10% reduction in per-project costs. However, the number of projects in the EA process has increased significantly, and resource constraints will be a more challenging issue in the future.
- *Improved federal/provincial review harmonization* – Over the last three years, there has been a steady increase in the number of projects which trigger both the provincial EA legislation and the *Canadian Environmental Assessment Act* (CEAA). More than 80% of projects in the provincial EA process are also subject to CEAA. Federal/provincial review cooperation presents numerous challenges, some of which were exacerbated by the inflexible prescriptiveness of the former provincial Act. The new Act, by creating more procedural flexibility, has made it easier to accommodate at least some of the federal review requirements without affecting overall review timelines. With the elimination of the project committee system, and introduction of a project-specific approach to defining review procedures, the EAO and federal agencies now negotiate project-specific workplans to guide federal participation in joint reviews. While the increased flexibility in designing provincial review procedures has made it easier to accommodate some CEAA procedural requirements, challenges remain. For example, it appears to be more difficult to harmonize joint reviews of projects which are subject to federal “comprehensive study” requirements, now that more procedurally specific amendments to CEAA have taken effect (in late October 2003). The EAO and the Canadian Environmental Assessment Agency have recently negotiated a new long-term federal/provincial EA cooperation agreement which reflects the recent statutory changes to EA legislation made by both governments. Some experience

working with the two new EA regimes under the new cooperation agreement will be needed in order to evaluate reliably how well the two regimes harmonize.

7.2 Other Sixteen-Month Experience

The following additional preliminary comments are offered with respect to the consequences and effectiveness of the government's EA reform initiative:

- *Project workload* – The number of projects actively engaged in the EA process has more than doubled since 2001, and higher project volumes are expected to be sustained for at least the next two years. While this may reflect in part increased proponent confidence in the EA process, it has also been influenced by a range of external factors, including:
 - greater investor confidence in the provincial economy;
 - the new provincial energy plan, which has triggered proposals to develop wind farm and hydro-electric power projects;
 - increasing metal prices, leading to an increased number of mining proposals – currently, reviews of 5 metal mines, 2 aggregate mines and 1 coal mine are active; and
 - the government's Public/Private Partnerships initiative, resulting in five large infrastructure projects entering the EA process.
- *Government agency participation* – Typically, the EAO now establishes technical advisory groups as the primary forums for federal, provincial and local government input to EA reviews. Through these groups, member agencies act as sounding boards for the EAO, providing feedback from the standpoint of their respective interests and program mandates. For agencies which do not wish to be involved in such a committee process, other arrangements can be made to receive and address their comments. As noted above, some agencies are facing challenges in participating in EA reviews, given scarcer staff and funding resources.
- *Public consultation* – With the inception of the new process, there had been significant public concern that, in the absence of legislated public consultation provisions, there would be a measurable reduction in the avenues for public involvement. However, experience to date confirms the EAO's expectations that there is little or no change in the type of public consultation implemented under the new Act. The legal provisions contained in the previous Act were replaced by policy expectations set out in the *Public Consultation Policy Regulation*. These provisions are similar to, but more flexible than, the former requirements. It should be noted that, while the new regulation indicates that there should be at least one public comment period, holding two comment periods is preferred in cases where there is enough time and there is significant public interest. In a few cases, review timelines were too tight to allow for a second public comment period, although this was largely offset by the considerable improvement in the quality of public consultation programs conducted by proponents during the pre-application stage. Under the new process, the EAO is finding that pre-application public consultation programs are now essentially of the same quality as those conducted by proponents after their EA applications have been filed.
- *Access to information* – While the same types of documentation continue to be available to the public through the new Project Information Centre as through the former Project Registry (under the previous Act), almost all of it is now circulated electronically, in line with government-wide

policy. In communities lacking broad-band Internet access, the EAO is continuing to provide hard copies of documentation through local outlets. In most communities, the public is able to access the Internet at public libraries, if not at home. There has been little public concern expressed on the switch to electronic document circulation, and most public comments are now filed by e-mail.

- *First Nations consultation* – Court decisions have established that provincial government activities cannot infringe existing aboriginal rights and/or title unless there is proper justification. The Courts have further held that, where a First Nation has asserted but not yet proved aboriginal rights and/or title, there is a constitutional and fiduciary obligation to consult and consider the interests being asserted. Under the previous EA process, most First Nations had relied on the project committee mechanism to receive, consider and comment on project information, and they are having to adapt to the flexible approach under the new process. At the outset, First Nations had expressed concern that, with the elimination of the project committee system, their government-to-government relationship with the province during EA reviews would be eroded. However, where First Nations have concerns or interests, their involvement in EA reviews under the new process has been maintained at (or above) former levels, and the trend is towards increased (not reduced) involvement, in response to evolving case law. Under the new process, a variety of approaches is being used to involve First Nations and elicit their input. In many cases, First Nations are participating in project review teams or technical advisory groups set up to advise the EAO. In some cases, individual First Nations are being involved through specially tailored procedures negotiated bilaterally or trilaterally between the Band and either or both the proponent and the EAO. Still other First Nations are participating by both means. Opportunities for First Nations involvement are identified in the section 11 orders referred to in section 5. The EAO has had to continually adapt its First Nations consultation practices in response to evolving case law on First Nations rights and title, and as noted above, is currently guided by the *Provincial Consultation Policy (2002)* in meeting its constitutional obligations.
- *Legislated timelines* – As was the case under the previous Act, the EAO has continued to meet almost all of the legislated time limits imposed on it under the new Act, as required by its current Service Plan. The EAO extended the time limit for a government review step only once in 2003. The new Act now provides for the imposition of time limits on proponents, partly because, in the past, proponent delay in filing information was a leading cause of protracted reviews. Time limits were imposed on 12 of the 18 proponents whose projects were transitioned into the new process on December 30, 2002. In many of these cases, project review activity had been dormant for some time because proponents had not submitted requested information deemed necessary for project review to resume. To date, these time limits appear to have been a factor in the resumption of several project reviews, while two other reviews have been terminated by their proponents.

- *Overall review duration* – Whether the new process will have the effect of shortening overall review duration significantly cannot be conclusively demonstrated with only sixteen months of experience, but this should be the case. Given that standing legislated time limits govern all steps of the application review stage, the primary source of variability in overall review duration is the time required to complete the pre-application stage. This can be influenced by a range of factors, including the degree of proponent urgency, public attitudes, First Nations interests and technical complexity. Scheduling certainty is significantly greater where a proponent can sustain a high level of pre-application consultation and technical study effort from the outset of the pre-application stage, since the EAO is now better equipped to manage the involvement of other parties to ensure timely input and advice on the studies necessary to support the proponent's EA application. In such cases, the signs are encouraging – for some reviews, it has proven possible to estimate the overall review timetable (including both the pre-application and application review stages) to within a few weeks.
- *Referring projects to Minister to set review process* – While this option exists in the new legislation, the EAO has not chosen this option for any of the projects it has handled to date. It had always been intended that most projects would be subject to staff-level reviews managed by the EAO, and this was the review path chosen in all cases except three – see below.
- *Waiving projects out* – To date, three projects (8% of the active project review workload since December 30, 2002) were deemed to satisfy the legal test that they did not have the potential for significant adverse effects, and so were waived out of the EA process without the need for the proponent to obtain an EA certificate. All other projects (92%) were consigned to a staff-level review managed by the EAO.
- *Seeking Ministerial policy direction* – The ability to seek Ministerial direction on policy issues raised during the course of a review is new. The EAO has not used this procedure to date.
- *Compliance issues* – Under the new EA process, the practice of requiring proponents to report regularly on their progress in complying with EA certificate conditions is being continued. While this approach was implemented in the final years of the former process to deal with the challenges entailed in tracking multiple conditions set under numerous certificates issued over several years, experience is still too limited to evaluate the effectiveness of the self-tracking requirement. However, it should be useful in complementing the monitoring and enforcement efforts of the line agencies responsible for specific conditions, helping to ensure that conditions are not overlooked.

8. CONCLUSIONS

The new *Environmental Assessment Act* has been in effect for some sixteen months. While the signs are encouraging, it is too soon to determine reliably the effects of the changes. Experience to date suggests increased proponent confidence in the process, given the number of “opt-ins”. At the same time, public consultation efforts have not diminished under the new process, and through negotiations, a high level of First Nations participation has also been maintained. Joint federal/provincial EA reviews face some harmonization challenges which are now being addressed under the new cooperation agreement. The greatest harmonization gains are achieved through joint

sign-off on workplans and review schedules. Targeted cost efficiencies are being realized, and the EAO is gearing up for a sustained high volume of project reviews for the next two years.

9. REFERENCE SOURCES

All key information on the new legislation and procedures is readily accessible through the EAO's website at <eao.gov.bc.ca>. The following sources were highlighted in this paper:

- the *Environmental Assessment Act*, S.B.C. 2002, c. 43;
- the *Reviewable Projects Regulation*, B.C. Reg. 370/2002;
- the *Concurrent Approval Regulation*, B.C. Reg. 371/2002;
- the *Prescribed Time Limits Regulation*, B.C. Reg. 372/2002;
- the *Public Consultation Policy Regulation*, B.C. Reg. 373/2002;
- the *Transition Regulation*, B.C. Reg. 374/2002;
- the Responsible Minister Order-in-Council, OiC 1157/02; and
- the *Guide to the British Columbia Environmental Assessment Process* (EAO, March 2003).